ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of	
IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS IN THE TELECOMMUNICATIONS ACT OF 1996	CC Docket No. 96-98

FURTHER REPLY COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 450 resale carriers and their underlying product and service suppliers, offers the following reply comments in response to the submissions of other commenters in the captioned rulemaking proceeding:

- The Commission should mandate the use and expeditious deployment of an interim "dual-PIC" and ultimately a permanent "multi-PIC" or "smart-PIC" presubscription methodology, in conjunction with customer notification, education and balloting funded by the LECs. The costs associated with network modifications occasioned by the implementation of dialing parity should be recovered in a manner no differently than the costs arising out of other LEC network "upgrades." The Commission has correctly concluded that "nondiscriminatory access" as it applies to telephone numbers, operator services and directory assistance and directory listings requires incumbent LECs to make available to the subscribers of competing providers the same access they afford their own customers.

- TRA vigorously disagrees with the various incumbent LECs that argue that the implementing details associated with the deployment of dialing parity should be left to the States. Multiple State proceedings, much less individual negotiations, play to the incumbent LECs' strengths, allowing them to fully leverage their market position and localized resource concentrations. While such strategic manipulation would be detrimental to all market entrants, it would have a particularly powerful adverse impact on small to mid-sized competitors who cannot match the massive resources of the RBOCs and the large independent LECs. The public interest certainly would not be furthered by forcing small to mid-sized carriers to limit the number of markets in which they can provide service because they must dedicate resources to battling over the same issues in 50 plus different jurisdictions.

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The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.1415, hereby replies to the further comments submitted by other parties in response to the Notice of Proposed Rulemaking, FCC 96-182, released by the Commission in the captioned docket on April 19, 1996 (the "Notice"). As directed by the Notice, the parties have addressed in their further comments the manner in which the Commission proposes to implement those provisions of the Telecommunications Act of 1996 ("'96 Act")[1] which govern number administration and which require local exchange carriers ("LECs") to make available toll and other dialing parity, advance notice of technological changes and access to rights-of-way.[2] TRA will address herein the positions espoused by the incumbent local exchange carriers with respect to the '96 Act's mandate that they provide local and toll dialing parity to competing providers of such services.

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[1] Pub. L. No. 104-104, 110 Stat. 56 ("'96 Act")

[2] 47 U.S.C. §§ 251(b)(3), 251(b)(4), 251(c)(5), 251(e)(1).

I.

INTRODUCTION

In its further comments, TRA urged the Commission to interpret broadly the dialing parity requirement embodied in Section 251(b)(3) of the '96 Act, adopting and imposing in so doing uniform, federal rules that mandate the use and expeditious deployment of an interim "dual-PIC" and ultimately a permanent "multi-PIC" or "smart-PIC" presubscription methodology, in conjunction with customer notification, education and balloting funded by the LECs. TRA expressed the view that network modifications associated with the implementation of dialing parity should be treated no differently than other LEC network "upgrades" when it comes to recovery of associated costs. TRA endorsed the Commission's strict interpretation of "nondiscriminatory access" as it applies to telephone numbers, operator services and directory assistance and directory listings, and argued that the availability of these services for resale is an essential element of such nondiscriminatory access

TRA also agreed with the Commission that it should retain its authority to set policy with respect to all facets of numbering administration, but could delegate to the States for action not inconsistent with its numbering administration guidelines matters involving the implementation of new area codes. In funding number administration, TRA urged the Commission to exercise the same care it had demonstrated with respect to the assessment of regulatory fees to avoid imposing a double payment burden on resale carriers.

With respect to network disclosure requirements, TRA supported the Commission's views regarding the types of information that Section 251(c)(5) mandates must be disclosed by

an incumbent LEC and the timetables, and vehicles, for such disclosure. Finally, TRA urged the Commission to strictly construe the obligation imposed by Section 251(b)(4) on incumbent LECs to afford competitors access to poles, conduits and rights-of-way, requiring a fair and equitable allocation of capacity among all entities seeking to make use of such rights of way and establishing a high burden of proof that must be overcome by LECs claiming an inability to comply with this obligation.

As noted above, TRA will briefly address in these further reply comments some of the views expressed by the incumbent LECs with regard to the obligation imposed by the '96 Act on LECs to provide dialing parity to competing local and toll service providers.[3]

II

ARGUMENT

A. The Commission Should Reject Attempts To Limit Statutorily-Mandated Dialing Parity And Associated Non-discriminatory Access To Services (¶¶ 202 - 219)

The mandate of Section 251(b)(3) with respect to the duty of LECs to provide "dialing parity" is clear and all encompassing. All LECs are required to provide dialing parity to competing providers of telephone exchange service and telephone toll service and . . . to permit all such providers to have nondiscriminatory access to telephone numbers, operator

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[3] *See, e.g.,* Comments of Ameritech, the Bell Atlantic Telephone Companies ("Bell Atlantic"), BellSouth Corporation ("BellSouth"), Cincinnati Bell Telephone Company ("Cincinnati Bell"), GTE Service Corporation ("GTE"), Pacific Telesis Group ("PacTel"), SBC Communications, Inc. ("SBC"), NYNEX Telephone Companies ("NYNEX"), U S West, Inc. ("U S West"), Southern New England Telephone Company ("SNET"), and United States Telephone Association ("USTA").

services, directory assistance, and directory listing, with no unreasonable dialing delays."[4] Certain incumbent LECs are not, as suggested by some commenters, exempted by Section 251(g) from the Section 251(b)(3) directive to the extent it involves "dialing parity with respect to telephone toll services."[5] Section 251(g) simply preserves in place the equal access obligations already imposed on the Regional Bell Operating Companies ("RBOCs") and GTE; it does not absolve other LECs from the duty to provide full dialing parity. Moreover, the contention will soon be a moot point because current obligations can be superseded at any time under Section 251(g) by regulations prescribed by the Commission, including regulations prescribed in this proceeding.

The mandate of Section 251(b)(3) is equally clear and all encompassing in other respects. All LECs are required to "permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." Certain incumbent LECs attempt to muddy the waters as to this directive, suggesting that LECs should not be required to provide any specific form of service.[6] The short and simple answer has already been provided by the Commission and the Congress. "'[N]ondiscriminatory access'

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[4] 47 U.S.C. § 251(b)(3). "Dialing Parity" is defined by the '96 Act as the ability of a person that is not an affiliate of an LEC "to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)." 47 U.S.C. § 153(r)(39).

[5] 47 U.S.C. § 251(g). *See, e.g.*, Comments of U S West at 4-5.

[6] *See, e.g.*, Comments of U S West at 8-11; Comments of USTA at 6-8.

means the same access that the LEC receives with respect to such services."[7] In other words, if the LEC allows its customers to connect to a local operator by dialing "0" or "0" plus the desired number, it must provide the same capability to customers of competing local telecommunications providers.[8] Likewise, such competing providers must be afforded access to telephone numbers in the same manner that such numbers are provided to incumbent LECs and their customers must be afforded the same access to a LEC's directory assistance service and provided the same opportunity to obtain a directory listing as LEC customers. It matters not what services are competitive and what services are not. The nondiscriminatory access requirement is unambiguous and without exception; it calls for like treatment of customers irrespective of their local telecommunications provider.

TRA also disagrees with those incumbent LECs that argue that they should not be required to notify or educate customers regarding carrier selection procedures or to implement "balloting" procedures, arguing that "[s]uch a requirement would, in effect, force incumbent

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[7] Notice, FCC 96-182 at ¶ 214. Access should not, as suggested by SWB (at 6-8), be contingent upon the successful completion of "voluntary negotiations." There is nothing to negotiate; the same capabilities must be offered on the same terms and conditions that they are made available by the LEC to its own subscribers. Negotiations will only be used to slow the process.

[8] NYNEX argues (at 7) that "the Act does not require NYNEX to provide its operator services in a form which allows providers to 'resell' NYNEX's operator services to their end users as if they were their own." While Section 251(b)(3) may not speak to this point, Section 251(c)(4) does, 47 U.S.C. § 251(c)(4). This latter provision requires an incumbent LEC to offer for resale at wholesale rates every telecommunications service the carrier offers at retail to its subscribers. Moreover, contrary to GTE's contentions (at 16), Section 251(c)(3) requires the unbundling of operator services as a network element. 47 U.S.C. § 251(c)(4). Operator services fall under the umbrella of facilities, including the component features, functions and capabilities thereof, used in the provision of a telecommunications service. 47 U.S.C. §§ 153(r)(39).

carriers to provide and pay for the advertising of new entrants."[9] These carriers miss the point. Such an obligation would be predicated on the enormous advantages that flow to the incumbent LECs by virtue of their preferred position in the intral ATA toll market, representing a small effort to compensate to for this dramatic imbalance. After all, 100 percent of intraLATA traffic in most areas still currently "defaults" to the incumbent LEC for carriage.

Carriers object to a "multi-PIC" or "smart-PIC" requirement, arguing that many switches do not currently allow for a third, fourth or greater choice of toll providers.[10] As noted above, TRA agrees that a full "2-PIC" presubscription methodology should be adopted as an interim measure pending development and deployment of the system capability necessary to support a "multi-PIC" presubscription methodology As TRA explained in its further comments, however, a "smart-PIC" system should ultimately be implemented because it would not only enhance competition by allowing customers to presubsribe to "niche" providers to carry specific elements of their traffic, but would as a result produce a far greater diversity of service offerings. For example, a customer that called regularly to a foreign destination might select a "call-back" operator for its international traffic and a traditional interexchange carrier for its domestic interstate carriage.

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[9] *See, e.g.,* Comments of SBC at 4; Comments of PacTel at 13; Comments of Ameritech at 20-22; Comments of USTA at 4.

[10] *See, e.g.,* Comments of SBC at 4; Comments of U S West at 5-6; Comments of NYNEX at 4-5; Comments of Bell Atlantic at 4-5; Comments of USTA at 3-4.

Carrier claims that the recovery of costs associated with the deployment of dialing parity should be left to "the market" or "voluntary negotiations" should be summarily rejected.[11] Cost recovery can, and if permitted to be, will, be used as a competitive weapon. Incumbent LECs, accordingly, should never be permitted to impose charges associated with the deployment of dialing parity on competitors. Nor should cost recovery be determined in "voluntary" negotiations between the entrenched provider and new market entrants. As TRA recommended in its further comments, the network modifications associated with implementing dialing parity should be treated no differently than other LEC network "upgrades" and the costs associated with the former, therefore, should be treated like the costs associated with the latter; indeed, given the enormous advantage from which the LECs have benefitted for years in the intraLATA toll market, it may well be appropriate to require the LECs to shoulder the full or a sizeable portion of the financial burden of remedying this competitive imbalance.

B. The Commission Should Promulgate Uniform, Detailed National Requirements For Deployment Of Dialing Parity (¶¶ 202 - 219)

TRA vigorously disagrees with the various incumbent LECs that argue that the implementing details associated with the deployment of dialing parity should be left to the States.[12] As TRA stressed in its further comments, the benefits attendant to promulgation of nationwide policies and uniform national rules are manifest in light of what the Commission has

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[11] *See, e.g.*, Comments of SBC at 8-9; Comments of Bell Atlantic at 5.

[12] *See, e.g.*, Comments of PacTel at 8-17; Comments of Bell Atlantic at 2-3; Comments of Ameritech at 8-13; Comments of GTE at 8-13.

correctly characterized as "the nationwide character of development and deployment of underlying telecommunications technology, and the nationwide nature of competitive markets and entry strategies in the dynamic telecommunications industry."[13] As the Commission itself has recognized, concrete national standards would speed competitive entry not only by eliminating protracted State-by-State regulatory battles and more promptly opening the intraLATA toll market to full and fair competition, but by easing to a degree the formidable task faced by entities planning competitive entry in multiple markets, allowing such entities to utilize common network designs across markets, thereby securing cost-efficiencies that would be denied them if different network configurations were required in each market.[14] From an administrative perspective, uniform national requirements would, as recognized by the Commission, narrow the range of permissible negotiated results, thereby minimizing the incumbent LECs' bargaining leverage, ensure that individual LEC/CLEC agreements did not establish unworkable precedents for later market entrants, and simplify and accelerate federal and state regulatory and judicial review, facilitating consistency among regulatory and judicial decisions.[15]

Multiple State proceedings, much less individual negotiations, play to the incumbent LECs' strengths, allowing them to fully leverage their market position and localized resource concentrations. A lack of concrete national standards would afford incumbent LECs the opportunity to "game" the process in individual States. As TRA has repeatedly stressed,

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[13] Notice, FCC 96-182 at ¶ 26.

[14] Id. at ¶ 30.

[15] Id. at ¶¶ 31, 32.

monopolists do not easily relinquish control of their monopoly bastions; indeed, monopoly providers can be expected to avail themselves of every conceivable opportunity to delay the advent of competition. Reserving all detailed issues for individual State resolution would hand the incumbent LECs a means to complicate and slow competition by strategically manipulating the processes of individual States. While such strategic manipulation would be detrimental to all market entrants, it would have a particularly powerful adverse impact on small to mid-sized competitors. Smaller players obviously cannot match the massive resources of the RBOCs and the large independent LECs. The larger the number of issues that must be debated in multiple forums, the more difficult it is for small to mid-sized carriers to compete in multiple markets. And the public interest certainly would not be furthered by forcing small to mid-sized carriers to limit the number of markets in which they can provide service because they must dedicate resources to battling over the same issues in 50 plus different jurisdictions.

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies in this docket consistent with these further reply comments and its earlier filed further comments.

Respectfully submitted,

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